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TEAM NEGOTIATIONS

DAVID SALLY* & KATHLEEN O'CONNOR**

I. INTRODUCTION

Solo advocacy has a mythic prominence in the legal profession. Standing alone before the judge, jury, witness, client or opponent is the central vision of many courtroom dramas, much lawyerly day-dreaming, and, most importantly, almost all legal education. By contrast, managerial education at most business schools these days emphasizes the learning and practice of teamwork and team skills. This emphasis reflects the realities of work arrangements in modern organizations: Whether one considers manufacturing, research and development, banking, consulting, or strategic planning, work is likely to be done by teams rather than through the efforts of a solo employee.¹ This trend is especially true for firms with multiple offices, higher revenues, and more employees.² A business student will certainly study teams in a core course on general management and is very likely to find an elective on team dynamics in the school's curriculum.

Not surprisingly, this difference in emphasis is manifest in negotiation research, both its practice and its content. With respect to the former, law school researchers are far more likely to be solo advocates, while their business counterparts utilize a team. One can compare the authorship of articles published in three prominent journals, the *Harvard Negotiation Law Review*, the *Negotiation Journal*, and *Organizational Behavior and Human Decision Processes*, from 1999 to the present. The first journal features primarily researchers from law schools and the third journal primarily from business schools, while the second is a blend of both. The percentage of articles that were authored by a single person over the last five years is as follows: *Harvard Negotiation Law Review*, 83%; *Negotiation Journal*, 70%; and *Organizational Behavior and Human Decision Processes*, 17%.³ There

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1. See JON R. KATZENBACH & DOUGLAS K. SMITH, *THE WISDOM OF TEAMS: CREATING THE HIGH-PERFORMANCE ORGANIZATION* (1993).

2. See Dennis J. Devine et al., *Teams in Organizations: Prevalence, Characteristics, and Effectiveness*, 30(6) *SMALL GROUP RESEARCH* 678-711 (1999).

3. Counts of solo-authored and team-authored articles were gathered by the present authors for

are, of course, many factors underlying the dramatic variance in solo authorship, but clearly one essential factor is the cultures of the professions.

In a negotiation, process and content are intimately linked and so it is with the research on negotiations. While the legal literature has few examples of work on negotiating teams (a key, somewhat dormant, exception is the work on labor disputes), the organizational behavior literature has recently characterized a number of regularities about teams in negotiations and has concluded that teams and individuals negotiate differently. Hence, the plan and purpose of this paper: as a team, we will review the most important of these advances in knowledge. Furthermore, because law firms utilize teams as frequently as any other complex, modern organization, we will advocate to our law school colleagues that they attend to these findings, utilize them in the classroom, and contribute to future discoveries about teams and negotiations.

II. THE PROS AND CONS OF TEAMWORK

Rather than send a solo negotiator to the table, decision makers may opt to pull together a team to hammer out the terms of a deal. Despite the costs of assigning a deal to a team, there are a number of reasons why this decision can make good sense. Negotiation is cognitively taxing. Parties must continually attend to both their own and the other side's interests and constraints as they work to agree on mutually beneficial terms. Teams allow for a division of labor and a combining of skill that means that $N + 1$ heads are better than one.⁴ On a related note, teams are likely to provide functional diversity that can pave the way to better deals. Composing a team that includes both process and content experts, strategic as well as tactical thinkers, number crunchers and smooth talkers allows for a range of skills that is likely to outmatch those of any single team member. For political reasons, too, there may be wisdom in picking teammates from different groups. For instance, a local union is likely to select representatives from each of several bargaining units to increase the chances that contract terms will be ratified by the units.

Still, it is not a foregone conclusion that teams should always be chosen over solo negotiators: there are some deep, dangerous pitfalls. Decades of study of groups and teams by social psychologists highlight a fundamental tension experienced by teammates—how to capitalize on the diverse abilities and opinions of members while at the same time acting as a cohesive unit. Scholars have sought answers to these questions by studying the problem

each journal from 1999 to 2003. Data available upon request.

4. See Gayle W. Hill, *Group Versus Individual Performance: Are N+1 Heads Better than One?*, 91 PSYCHOL. BULL. 517 (1982).

from several angles. Questions about the composition of teams continue to attract attention. What are the tradeoffs inherent in assigning teamwork to friends versus strangers?⁵ Do the benefits of members with a variety of experiences and skills outweigh the advantages of smooth functioning that are likely to flow from members who are similar to one another?⁶ The short answer to this second question is "yes but." Teamwork presents special challenges in coordination and motivation of members. For instance, groups, especially groups larger than four, can suffer from free rider problems.⁷ Rather than adding to the team, the cover provided by larger groups provides an opportunity for members to reduce their efforts rather than to fully participate in group decisions. Even for teammates who are motivated to work hard to serve the team, some aspects of the process may interfere with effective decision making. For instance, people working in teams tend to focus their discussion on facts and opinions that are held in common, leaving unique pieces of information or bits of data out of the conversation.⁸ When these bits of information are critical to the decision, the cost is a low-quality outcome.⁹ As groups gel and members come to value their cooperative relationships with each other, they can develop an intolerance to dissenting voices, even when those voices challenge the majority to consider more carefully their own judgments and interpretation of facts.¹⁰ Thus, while there are some advantages to convening a team to carry out work that could be done by a solo, teams need to work hard to ensure the full participation of their members.

Compared to the study of work groups and teams, the literature on negotiation teams is far smaller, making it difficult for scholars to offer many empirically derived recommendations to practitioners. However, one solution to the paucity of empirical evidence is to turn to the wealth of research on

5. See Deborah H. Gruenfeld et al., *Group Composition and Decision Making: How Member Familiarity and Information Distribution Affect Process and Performance*, 67 *ORG. BEHAV. & HUM. DECISION PROCESSES* 1 (1996); Karen A. Jehn & Priti P. Shah, *Interpersonal Relationships and Task Performance: An Examination of Mediating Processes in Friendship and Acquaintance Groups*, 72 *J. PERSONALITY & SOC. PSYCHOL.* 775-90 (1997).

6. See Verlin Hinsz et al., *The Emerging Conceptualization of Groups as Information Processors*, 121 *PSYCHOL. BULL.* 43 (1997).

7. See B. Latané et al., *Many Hands Make Light the Work: The Causes and Consequences of Social Loafing*, 37 *J. PERSONALITY & SOC. PSYCHOL.* 822 (1979).

8. See Daniel Gigone & Reid Hastie, *The Common Knowledge Effect: Information Sharing and Group Judgment*, 65 *J. PERSONALITY & SOC. PSYCHOL.* 959 (1993).

9. See Gerald Stasser & Dennis D. Stewart, *Discovery of Hidden Profiles by Decision-Making Groups: Solving a Problem Versus Making a Judgment*, 63 *J. PERSONALITY & SOC. PSYCHOL.* 426 (1992).

10. See Charlan J. Nemeth, *Differential Contributions of Majority and Minority Influence*, 93 *PSYCHOL. REV.* 23 (1986).

work teams for answers. Although this is a reasonable source for insights, it is critical to acknowledge how negotiating teams differ from other kinds of work teams. Social psychologists have made a distinction between purely cooperative teams and purely competitive groups. Cooperative teams have members who share the same motives and incentives and are focused on reaching a common goal. Competitive teams, including those involved in social dilemmas, are motivated to maximize their own gains irrespective of others' outcomes. Negotiating teams face a more complicated set of constraints. When they are working together to draft a plan or marshal support for a set of positions or arguments, members of negotiating teams are engaged in a cooperative task. Yet, if they represent groups with conflicting interests, they have incentives to improve their standing at the expense of their teammates. When the team sits down across the table from another team or solo, it is engaged in a mixed-motive task, one that requires the team both to cooperate to reach a mutually beneficial deal and to compete to get the best deal possible for its side. We will consider these unique features of negotiating teams as we review the advantages and liabilities of teamwork at the bargaining table.

III. TEAMS AND SOLOS AT THE BARGAINING TABLE

Although the empirical evidence documenting the advantages and disadvantages that accrue to bargaining teams continues to grow, there are a host of unanswered questions. We begin by reviewing the literature and then, drawing on social psychological research on work teams, we speculate about other possible benefits and liabilities.

A common thread that connects the studies of negotiating teams is the clear advantage negotiating teams enjoy over solos. Without exception, teams reach deals of better quality than do their solo counterparts.¹¹ This is true regardless of whether teams negotiate against other teams or against solos. Thus, it is the team itself that is driving the effect rather than the composition of the other side. There are a number of reasons for this benefit. First, as we noted earlier, negotiating is a complex cognitive task. With every offer and every answer to a question, negotiators are receiving information that may very well yield insights into the other side's priorities, interests, and alternatives. In addition to managing the interpretation of incoming information, negotiators also must craft counteroffers, generate questions, and decide whether and how to answer the other side's questions. Although this is

11. See Jeffrey T. Polzer, *Intergroup Negotiations: The Effects of Negotiating Teams*, 40(4) J. CONFLICT RESOL. 678 (1996); Leigh Thompson et al., *Team Negotiation: An Examination of Integrative and Distributive Bargaining*, 70 J. PERSONALITY & SOC. PSYCHOL. 66 (1996).

quite a task for a solo negotiator, especially as the complexity of the issues grows and the stakes mount, teams have the option of breaking the task into component parts that can be designated to team members (roles include spokesperson, offer tracker, etc.). The extra memory capacity and parallel data processing offered by the linked minds of the team may be able to handle complex issues and interests that would overwhelm and “crash” a solo negotiator.

Second, there are tactics available to a team that cannot be implemented by an individual. The most outstanding example is the good cop/bad cop tactic.¹² This tactic depends critically on having two different people perform each role in the proper order (bad cop, then good cop).¹³ Another example is the use of an intentionally absent team member who is holding a key resource—projections, budgets, authorization, etc. Many solo negotiators use this tactic to transform their side into a team by claiming that any additional offer or concession will have to be approved by the boss.

Third, with the addition of each new member of the negotiating team, the collective network of colleagues and acquaintances around the team grows. The larger the network, the better the access the team has to information that can help it in its negotiation. For instance, team members may tap members into their expanded network to learn about the other side, its interests, its likely strategy, and its outside options. Furthermore, many studies document that when negotiators are able to develop trust, they are able to exchange the information necessary to reach high-quality deals.¹⁴ With more members at the table, teams have multiple opportunities either to rely on established relationships or to develop relationships that are likely to be helpful for establishing trust and, therefore, sharing honest and accurate information. That this is more than a theoretical possibility has been confirmed in a field study of labor negotiations.¹⁵

Particularly when there is potential in the negotiation to make trades among issues or to introduce additional issues, creative thinking can hold the key to mutually beneficial deals. In some cases, the broader the range of talents on the team, the better able the team should be to generate creative

12. See John A. Hilty & Peter J. Carnevale, “Black-hat/White-hat” Strategy in Bilateral Negotiation, 55 *ORG. BEHAV. & HUM. DECISION PROCESSES* 444 (1993).

13. See Susan E. Brodt & Marla Tuchinsky, *Working Together but in Opposition: An Examination of the “Good-Cop/Bad-Cop” Negotiating Team Tactic*, 81 *ORG. BEHAV. & HUM. DECISION PROCESSES* 155 (2000).

14. See K. Valley et al., *A Matter of Trust: Effects of Communication on the Efficiency and Distribution of Outcomes*, 34 *J. ECON. BEHAV. & ORG.* 211 (1998).

15. See Raymond A. Friedman & Joel Podolny, *Differentiation of Boundary Spanning Roles: Labor Negotiations and Implications for Role Conflict*, 37 *ADMIN. SCI. Q.* 28 (1992).

solutions. Creativity is threatened when negotiators feel stressed. Thus, to the extent that team membership insulates negotiators from the pressures that solos experience, it is likely to mitigate the stress a negotiator might feel if she or he were handling the negotiation alone. One specific pressure is accountability, namely, representing an outside constituency at the bargaining table. Solo negotiators who are accountable often adopt a rather competitive stance in the negotiation that can limit their ability to build trust, exchange critical information, and keep focused on opportunities for joint gains. Teams, however, are insulated from these effects. Even when a team is accountable for its outcomes, the members experience lower accountability pressures than solos and, more importantly, respond less competitively to these pressures. Hence, they are better able to balance the need to get the most out of the deal with an interest in cooperating to ensure that a mutually beneficial deal is reached.¹⁶

Thus far, we have emphasized the benefits that flow to negotiating teams. Yet, there are downsides to sending teams to the table. The first, and simplest, fact to point out is that teams are costly. Multiple people are being paid to do what one person could conceivably handle. There is a cost/benefit calculation that must ultimately buttress any decision to employ a negotiating team instead of a single bargainer. The same calculation is relevant in determining the size of the team: Each new member adds a layer of costs to the deal that will need to be recovered. Also, a member's efforts at this table limit his or her involvement other productive tasks. Any decision about assigning teams or solos must include some estimate of the costs and a consideration of the likely payouts.

Teams may be self-managing, but they are rarely self-sufficient—an organizational structure and culture supporting teams is necessary to make them effective. One pitfall that decision makers need to avoid is the “manager’s fallacy”—the belief that the key to effective teams is to simply put a group of bright people in a room together and stand back to watch the magic. Difficulties with coordination and motivation that plague some teams need to be understood and steps taken to avoid them before they sabotage any benefits the team could deliver. In fact, some of the good news about negotiating teams may fail to translate into high-quality deals as team size increases beyond the three members that are typically assembled in social psychologists’ laboratories. Empirical research on teams and groups working on other kinds of tasks shows that the greater the number of team members, the more anonymous and less accountable any one member may feel. Some

16. See Kathleen O'Connor, *Groups and Solos in Context: The Effects of Accountability on Team Negotiation*, 72 *ORG. BEHAV. & HUM. DECISION PROCESSES* 384 (1997).

members may take this opportunity to scale back their efforts, creating a free-rider problem. Assigning people to specific roles and holding them accountable for fulfilling their roles as well as for the team's output is one way to combat this problem on large teams.

Team oversight might also be necessary to assure that the team is sufficiently heterogeneous. Because friendship networks are largely based on similarity,¹⁷ a team that arises spontaneously or endogenously across one person's network may be insufficiently diverse for the purpose at hand. As outlined above, many of the benefits of teams only occur if there are differences in perspectives, information, and histories.

In addition to increasing personnel costs and requiring an active supporting structure, negotiating teams are slow. Coordination becomes a bigger problem as more people are added to the team. Teams need to take steps to ensure that everyone understands his or her role as well as the strategy for the negotiation. It can be very helpful for the team to establish a mechanism for taking breaks during the negotiation. This can serve two purposes. First, it can help keep the team moving in the same direction as the negotiation unfolds, and second, it gives the teammates a chance to continue to provide unique insights and ideas that can be used to formulate new offers or to readjust strategy.

A lack of coordination can cause teams to fracture, a risk not faced by individual negotiators. As the size of the team grows or as team members become more heterogeneous, the potential for intra-team conflict increases. The intra-team negotiation might end in an impasse as a team struggles to integrate the interests, positions, opinions, and outside options of all its members. It is essential to recognize that this struggle is not all bad: In fact, many intra-team disputes do not block performance.¹⁸ Conflicts that are focused on the task at hand, disagreements over the best strategy, or hashing out whether one set of issues deserves more or less consideration can help the team sort out its priorities and come to a better outcome than would have been possible had the team avoided the conflict. However, when the conflict becomes personal, the performance of the team is likely to suffer. Teams need to make sure that their conflicts do not spill over and become personal.¹⁹ This vigilance creates yet another time expenditure for team above what solos

17. See David Sally, *A General Theory of Sympathy, Mind-Reading, and Social Interaction, with an Application to the Prisoners' Dilemma*, 39(4) SOC. SCI. INFO. 567 (2000).

18. See Allen C. Amason, *Distinguishing the Effects of Functional and Dysfunctional Conflict on Strategic Decision Making: Resolving a Paradox for Top Management Teams*, 39 ACAD. MGMT. J. 123 (1996).

19. See *id.*; Karen A. Jehn, *Enhancing Effectiveness: An Investigation of Advantages and Disadvantages of Value-Based Intragroup Conflict*, 5 INT'L J. CONFLICT MGMT. 223 (1994).

will spend, especially during the critical preparation stage where teammates are getting to know each other and are working to pull together a plan for their negotiation.

The risks from intra-team division can also be limited if teams agree to internal decision-making rules before the negotiation begins. Even if conflicts among teammates over priorities were resolved originally, the team is likely to face considerable difficulties in deciding whether to accept a particular offer, risking impasses in the process. When anticipating difficulties in making decisions about finalizing deals, it would be helpful for teams to agree on a decision rule. Although unanimity is ideal for satisfying each teammate, the team may be best served by a majority decision rule that ensures that most parties get what they need from the deal.

IV. A MANAGEMENT AND LAW TEAM?

It should be apparent from our review that management scholars have made only initial forays toward a better understanding of team negotiations. There is a great opportunity for collaboration and teamwork between researchers from management schools and those from law schools. Here are a few examples of open questions:

1. Do teams enjoy the same advantages over solos in “real world” negotiations that they have in laboratory bargaining sessions? In particular, might law firms be a unique field study site enabling the comparison of the performance of solo advocates and teams of varying sizes?
2. How does organizational culture impact the effectiveness of negotiating teams? If the prologue to this paper is correct, legal negotiating teams are bargaining in the shadow of the solo advocate. Consequently, one might ask: Are legal teams more likely to consolidate multiple roles in one individual? Are there greater problems with information sharing? Are they more likely to implement internal decision rules, and if so, which ones?
3. Which specific elements within the negotiation process do teams capitalize upon? Studies could target teams and goal setting, first offers, reciprocal concessions, question asking, information sharing, ultimatums, etc.
4. What are the connections among team negotiation, multi-party

negotiation, and coalitions? Each of these topics has been pursued individually but few commonalities have been studied. However, it must be true, for example, that some of the techniques that are useful for forming a team are equally useful in solidifying a coalition. A two-party team negotiation can quickly become a much more complicated multi-party situation when one team fractures.

5. Experienced negotiators are more effective in teams than novice negotiators are.²⁰ Are those who are used to operating in teams more effective in team negotiations than are those who have no team experience? This question is one way to compare the task of negotiation with the other kinds of tasks that have been studied in the small group literature.

As more work is done by teams of lawyers, the need for law students to gain both theoretical and practical training in working interdependently becomes pressing. We believe that offering a course on negotiation can satisfy this need. Negotiation, whether done by solos or teams, is inherently a social task, requiring parties who are interdependent to work together to identify a mutually acceptable outcome. Thus, many of the lessons of teamwork that we reviewed above could be introduced rather easily as part of a course on negotiation. More specifically, though, experience teaching negotiation in management schools tells us that there is room in this kind of course for experiences and lessons in how to manage negotiation teams. With just a handful of team negotiation exercises, it would be rather easy for faculty to outline some common problems that teams face and to identify solutions to solve these problems. In this way, it is not necessary for law schools to dramatically revamp aspects of their curriculum. Rather than add courses in teamwork, training in how to effectively manage a team could be grounded in a negotiations course.

APPENDIX: FURTHER READING

Susan Brodt & Leigh Thompson, *Negotiating Teams: A Levels of Analysis Approach*, 5 *GROUP DYNAMICS: THEORY, RES., & PRAC.* 208 (2001).

Kathleen O'Connor, *Groups and Solos in Context: The Effects of Accountability on Team Negotiation*, 72 *ORG. BEHAV. & HUM. DECISION*

20. See Polzer, *supra* note 11.

PROCESSES 384 (1997).

Jeffrey T. Polzer, *Intergroup Negotiations: The Effects of Negotiating Teams*, 40(4) J. CONFLICT RESOL. 678 (1996).